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IN THE

Supreme Court of the United States

October Term, 1980

No. 79-938

ALLSTATE INSURANCE COMPANY,
Petitioner,

vs.

LAVINIA HAGUE, Personal Representative of the Estate of RALPH ALVIN HAGUE, Deceased,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITIONER'S BRIEF

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OPINION BELOW

The order and memorandum of the trial court appear at Appendix C to Petition for Writ of Certiorari, A-25; the opinion of the Minnesota Supreme Court on appeal appears at Appendix B to Petition for Writ of Certiorari, A-12; and the opinion of the Minnesota Supreme Court on rehearing appears at Appendix A, A-1. The opinion of the Minnesota Supreme Court on rehearing has not yet been officially reported.

JURISDICTION

The judgment of the Supreme Court of the State of Minnesota was entered on September 19, 1979. A copy of this judgment appears at Appendix D to Petition for Writ of Certiorari, A-31. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

This jurisdiction is invoked because the present opinion of the Minnesota Supreme Court is repugnant to certain constitutional provisions and prior decisions of this court.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the due process clause of the Fourteenth Amendment to the United States Constitution and the Full Faith and Credit Clause of the United States Constitution.

Section 1 of the Fourteenth Amendment to the United States Constitution, in pertinent part, provides:

> No State shall . . . deprive any person of life, liberty or property, without due process of law . . .

Article 4 §1 of the United States Constitution, in pertinent part, provides:

> Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. . . .

STATUTE INVOLVED

The Minnesota Statute involved, in pertinent part, provides:

> §65.14, Subd. 1—'Policy of automobile liability insurance' means a policy delivered or issued for delivery in this state . . .

QUESTION PRESENTED

Should the constitutional mandates of the due process section of the Fourteenth Amendment of the U. S. Constitution and the Full Faith and Credit Clause of the U. S. Constitution, as enunciated by this Court in *Home Insurance Company v. Dick*, 281 U.S. 397, 50 S.Ct. 338 (1930), *Hartford Accident and Indemnity Company v. Delta Pine and Land Company*, 292 U.S. 143, 54 S.Ct. 634 (1934), *John Hancock Mutual Life Insurance Company v. Yates*, 299 U.S. 178, 57 S.Ct. 129 (1936), *Rush v. Savchuk*, —— U.S. ——, 100 S.Ct. 571 (1980), and *Worldwide Volkswagen Corporation v. Woodson*, —— U.S. ——, 100 S.Ct. 559 (1980), be frustrated by the Minnesota Supreme Court's choosing their law to interpret a contract drawn in Wisconsin as it relates to an accident which took place in Wisconsin between Wisconsin residents?

STATEMENT OF THE CASE

The following is a stipulated-to statement of the facts which was presented to the Minnesota Supreme Court:

> The cause of action upon which this case is based arises out of an automobile and motorcycle accident which occurred on July 1, 1974 in Pierce County, Wisconsin, which is immediately adjacent to the border near Red Wing,

Minnesota. Ralph A. Hague was a passenger on a motorcycle owned and operated by his son, Ronald Hague.

The Hagues were traveling west on Highway 35, and they intended to turn left (to the south) onto a road that led to Elderwood Heights, Wisconsin. They slowed to an eventual stop and signaled their intention to make a left turn. While waiting for an eastbound car to pass in the oncoming or opposite lane, the motorcycle was struck from behind by an automobile owned and operated by Mr. Richard R. Borst, a resident of Ellsworth, Wisconsin. Mr. Ralph A. Hague died as a result of injuries sustained in this accident.

At the time of the accident, Ralph A. Hague resided with his wife, Lavinia Hague, in Hager City, Wisconsin, which is located just one and one-half (1-1/2) miles from Red Wing, Minnesota. Although Ralph A. Hague resided in Wisconsin, he was employed in Red Wing, Minnesota, and he had been employed in Red Wing for fifteen (15) years immediately preceding his death. After the accident, and prior to the initiation of the above entitled matter, Lavinia Hague moved her residence to Red Wing, Minnesota. On June 19, 1976, almost concurrently with the initiation of this action, Lavinia Hague was married to a Minnesota resident who operated an automobile service station in Bloomington, and established residence with her husband in Savage, Minnesota. The motorcycle which Ralph A. Hague was riding was owned by his son, Ronnie Hague, for about one year prior to the accident.

Ronnie Hague owned other vehicles that were insured by Allstate, but his motorcycle was not insured. Mr. Richard R. Borst was without valid insurance coverage at the time of the accident.

Ralph A. Hague was insured, at the time of the accident, by Allstate, which had issued one policy to the decedent (Policy No. 011 985 43), which policy extended coverage to three automobiles that Ralph A. Hague owned. A separate premium was paid for each such automobile. The policy was effective as of June 8, 1974, and it provided for uninsured motorist coverage to the limits of $15,000.00 for each such automobile.

On the 28th day of May, 1976, the Registrar of Probate for the County of Goodhue, State of Minnesota, appointed Lavinia Hague personal representative of the estate of her deceased husband, Ralph A. Hague. Subsequent to her appointment as personal representative, Lavinia Hague initiated the above entitled action against Allstate.

The plaintiff in this action, Lavinia Hague, widow of the deceased, Ralph A. Hague, is suing for declaratory relief construing the above indicated policy so as to "stack" the separate $15,000.00 uninsured motorist coverages on each automobile and therefore afford coverage in the total amount of $45,000.00. Questions of liability and amount of damages are not at issue in this proceeding, only the amount of coverage available. Plaintiff and defendant agree that if Minnesota law governs this case, "stacking" of the uninsured motorist benefits in the insurance policy is applicable.

The record does not reflect anything more about why a probate was begun in the State of Minnesota nearly two years after the death of Mr. Hague and whether it was ancillary to one in the State of Wisconsin, where the homestead of the decedent was. At the trial court level, cross motions for summary judgment were brought. The respondent Hague's motion was granted and the petitioner Allstate's motion was denied. Allstate then appealed to the Minnesota Supreme Court which af-

firmed the trial court. Allstate then petitioned for a rehearing on the matter and the petition for rehearing was granted. The matter was then reheard, but the Minnesota Supreme Court again affirmed the trial court. The appeal to this Court follows.

ARGUMENT

A. THE MINNESOTA COURT'S DECISION IS REPUGNANT TO CHOICE OF LAW DECISIONS OF THIS COURT.

Topically defined, the issue before this court is one of "choice of law". The decision of the Minnesota State Supreme Court chose the law of Minnesota, the forum state, over the law of Wisconsin in a dispute involving the interpretation of insurance contracts which were underwritten, applied for, and paid for by Wisconsin residents and issued covering cars garaged in Wisconsin. Additionally, the incident giving rise to the dispute was an automobile accident which occurred on Wisconsin roads involving three Wisconsin residents. At the time of the incident or occurrence giving rise to the interpretation of this Wisconsin insurance policy, there were no contacts with the State of Minnesota.

There is no dispute in this case as to jurisdiction. Minnesota has the right to take jurisdiction over this case involving a contract interpretation because Allstate does business in Minnesota. It is also the law of the case that Minnesota has concluded that Wisconsin law would not allow stacking of insurance policies in question and Minnesota law would allow stacking. Additionally, it is undisputed that Lavinia Hague, the widow of the decedent killed in the above referenced automobile accident, was a resident of Wisconsin at the time of

this accident and thereafter moved to Minnesota and began this action after she moved to Minnesota.

It is petitioner Allstate's position that under these circumstances the contacts of Minnesota to the transactions and occurrences giving rise to this litigation are so "slight and casual", that Minnesota's choice of its law under these facts violates the constitutional dictates of the "Due Process" Amendment and the "Full Faith and Credit" provision of the U. S. Constitution. In support of Allstate's position, the following cases of this Court are cited and described:

1. *Home Insurance Company v. Dick*, 281 U.S. 397, 50 S.Ct. 338 (1930). The case involved interpretation of an insurance policy which had been issued to a Mexican in Mexico covering a Mexican risk. The policy was subsequently transferred to Mr. Dick, who was a domicilliary of Mexico, but a permanent resident of Texas. The loss occurred in Mexican waters. The Supreme Court held that application of Texas law over Mexican law was a violation of due process under such circumstance. In so doing they indicated that the residency of Mr. Dick in Texas was of no relevance to the choice of law, just as Mrs. Hague's subsequent residency in Minnesota should have nothing to do with Minnesota's choice of law.

2. *Hartford Accident and Indemnity Company v. Delta Pine and Land Company*, 292 U.S. 143, 54 S.Ct. 634 (1934). A fidelity bond was written in Tennessee by Hartford Insurance Company to cover fraud and dishonest acts of the employees of Delta Pine and Land Company. Delta Pine and Land Company and the defaulting employee subsequently moved to Mississippi and the loss on the bond took place in Mississippi. Hartford Insurance Company did business both in the State of Mississippi and the State of Tennessee. Delta Pine's

subsequent claim under the bond was not made within the time limitation on actions under the surety contract. The law of the State of Mississippi voided such contract limitations while the law of the State of Tennessee did not. The action was brought in Mississippi and the Mississippi court indicated that under these facts it would apply its own law and void the contract limitations, thereby ordering Hartford to pay Delta Pine. The U. S. Supreme Court said that the courts of Mississippi could not impose the law of Mississippi and to do so was a violation of due process when Mississippi had such "slight and casual" contact with the transaction, and Tennessee was the state where the contract was negotiated and made.

In so holding this court stated:

> A legislative policy which attempts to draw to the state of the forum control over the obligations of contracts elsewhere validly consummated, and to convert them for all purposes into contracts of the forum, regardless of the relative importance of the interests of the forum as contrasted with those created at the place of the contract, conflicts with the guaranties of the 14th Amendment. 54 S.Ct. 636.

3. *John Hancock Mutual Life Insurance Company v. Yates*, 299 U.S. 178 (1936). In this case, an action on a life insurance policy was brought. In May of 1932, the John Hancock Mutual Life Insurance Company, a Massachusetts corporation, insured the life of Harmon F. Yates, agreeing to pay upon his death $2,000.00 to his wife. The policy was applied for, issued and delivered in New York where Mr. Yates and his wife resided, and where they remained until his death of cancer in the following month. Subsequently his widow moved to Georgia and brought suit on the policy in Georgia.

John Hancock denied payment on the policy because it contended that answers in the policy application as to whether the applicant was then in good health and whether he had ever been treated for cancer and other questions had been answered falsely and that these were material misrepresentations, which under the law of New York voided the policy. Georgia law indicated that whether the answers given by the insured in the application are material misrepresentations was a matter for the jury and applied its own law over that of New York's and let the matter go to the jury, where the jury awarded the policy benefits.

This court granted certiorari and reversed the Georgia court, indicating that the Georgia court failed to give full faith and credit to the New York statute under such circumstances. This court stated, as the petitioner feels in this case, that:

> Petitioner's right to the protection claimed under the Constitution was denied by the Supreme Court of Georgia. The rights of the petitioner can now be protected only by this court.

Some decisions of this court have allowed application of a forum state's law over that of a contracting state. (*Clay v. Sun Insurance Office Ltd.*, 363 U.S. 207, 80 S.Ct. 1222 (1960), 377 U.S. 179, 84 S.Ct. 1197 (1964), *Watson v. Employer's Liability Insurance Corporation*, 348 U.S. 66, 75 S.Ct. 166 (1954), and certain workers' compensation cases, such as *Pacific Employer's Insurance Company v. Industrial Accident Commission*, 306 U.S. 493, 59 S.Ct. 629 (1939).) In each of those cases however, where the court has accepted the forum state's choice of its own law, a significant contact relating to the incident giving rise to the claim or to the contract being interpreted,

occurred within the forum state. In *Watson* the plaintiff was injured in Louisiana, the forum state, and the forum state allowed direct action suits against the insurer. In *Clay*, the loss occurred in the forum state of Florida and the decedent had been making insurance payments from the State of Florida prior to the loss. In *Pacific Employer's*, California was the forum state and the employee was injured in California. There is no case of which we are aware which applies the forum state's law when, at the time of the occurrence, there were no contacts whatever with the forum state except a place of employment which was unrelated to the events giving rise to the litigation.

The only litigation-related contact with the State of Minnesota in this case is that, after the accident giving rise to the declaratory judgment, the widow moved to Minnesota and began the action. In *Home Insurance Company* (supra), the court indicated that Mr. Dick's residency in the State of Texas, even at times pertinent to the loss, was not a pertinent contact in the consideration of choice of law:

> The fact that Dick's permanent residence was in Texas is without significance. At all times here material, he was physically present and acting in Mexico. Texas was, therefore, without power to effect the terms of contracts so made. Its attempt to impose a greater obligation than that agreed upon, and to seize property in payment of the imposed obligation, violates the guaranty against deprivation of property without due process of law. 281 U.S. 408, 50 S.Ct. 341, 74 L.Ed. 933.

If you dismiss the relevancy of the residency of the respondent, established after the accident in question, there is virtual-

ly no contact with the State of Minnesota. Moreover, in *Delta Pine and Land Company* (supra), the event giving rise to the litigation occurred in the forum state and that was not enough contact with the forum state for it to apply its own law. In the instant case we have no incident or contact within the State of Minnesota.

If the Minnesota Supreme Court's decision is to be upheld, then any plaintiff, especially in representative actions such as this, could choose, to bring the lawsuit, a representative-resident of that state whose laws are most favorable to their position in the case and could expect that the forum state would choose its law, even if the forum state had had no prior contacts with the matter prior to their citizen-representative bringing the action. The Minnesota Court forthrightly indicated in footnote No. 6 to their original decision (A-19) that several other state courts have chosen the state of contracting to be dispositive as to choice of law. In footnote No. 7 (A-20) they concede that the state court which ruled otherwise had more contacts with the contract than they did in the instant case. After acknowledging this though, they give no reason why they chose to continue to accept Minnesota law in their original opinion and on rehearing. The majority in both decisions entirely avoided the constitutional ramifications of the decision.

B. RECENT JURISDICTIONAL DECISIONS SUPPORT PETITIONER'S POSITION.

This court has very recently decided the case of *Rush v. Savchuk*, —— U.S. ——, 100 S.Ct. 571 (1980). In that decision this court held that Minnesota could not, consistently with due process, exercise quasi in rem jurisdiction over the defendant

who had no forum contacts by attaching a contractual obligation of a liability insurance company which was licensed to do business in the state. Although *Savchuk* was a jurisdictional case, as opposed to a choice of law case, the reasoning of the court is helpful to the court's determination in this case.

Also decided contemporaneously with *Savchuk* was *Worldwide Volkswagen Corporation v. Woodson,* —— U.S. ——, 100 S.Ct. 559 (1980) in which this Court refused to extend Oklahoma's long-arm statute to corporate defendants who were automobile wholesalers and retailers who sold an automobile in New York which subsequently had an accident in Oklahoma.

The similarity between the constitutional questions presented in cases dealing with choice of law and those governing jurisdictional problems was pointed out in *Hanson v. Denckla,* 357 U.S. 235, 258, 78 S.Ct. 1228, 1242, 2 L.Ed. 1283, 1300 (1958), where Mr. Justice Black in his dissent noted:

> True, the question whether the law of a state can be applied to a transaction is different from the question whether the court of that state had jurisdiction to enter a judgment, but the two are often closely related and to a substantial degree depend upon similar considerations.

In the *Savchuk* case, the considerations which this court deems important to its decision were minimum contacts with the forum state. As Justice Marshall stated:

> That is, a State may exercise jurisdiction over an absent defendant only if the defendant has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fairplay and substantial justice' ". *International Shoe Co. v. Washington,* 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95

> (1945). In determining whether a particular exercise of state-court jurisdiction is consistent with due process, the inquiry must focus on "the relationship among the defendant, the forum, and the litigation". 100 S.Ct. 577.

In comparing this reasoning to our case, the Minnesota court should have shown that it has a relationship with the transaction which is being interpreted, with the occurrence which gave rise to the interpretation of the transaction, and the petitioner. There is no question but that Minnesota had no relation to the transaction (the contract) and the occurrence (the accident) which gives rise to the interpretation of the transaction. Minnesota does have a relationship with the petitioner Allstate, merely because Minnesota is one of fifty states in which the petitioner does business. However, the *Savchuk* case gave short shrift to the fact that State Farm did business in Minnesota where it said:

> State Farm is "found", in the sense of doing business, in all 50 States and the District of Columbia. Under appellee's theory, the "debt" owed to Rush would be "present" in each of those jurisdictions simultaneously. It is apparent that such a "contact" can have no jurisdictional significance. 100 S.Ct. 578.

Just as such a "contact" should have no jurisdictional significance, it should also have no choice of law significance.

Worldwide Volkswagen (supra) also gave us some insight as to the reason for the concept of minimum contacts which are very pertinent here. The Court stated:

> The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating

> in a distant or inconvenient forum. And it acts to ensure that the States through their courts do not reach out beyond the limits imposed on them by their status as co-equal sovereigns in a federal system. 100 S.Ct. 564.

It is of course the latter function which concerns us in this case as Minnesota took that step beyond the limits imposed on them in their status as a co-equal sovereign with Wisconsin in the federal system.

C. THE MINNESOTA COURT'S DECISIONS VIOLATE RULES OF SOVEREIGNTY AND REASONABLE EXPECTATIONS WHICH MINNESOTA ADMITTEDLY RECOGNIZES AS VALID.

It is clear by the laws of the State of Minnesota that they would be offended by another state doing the same thing to them that they have done to the State of Wisconsin. Minnesota Statutes have even defined an automobile policy as one delivered within the confines of their state. M.S. 65B.14, Subd. 1 states in pertinent part:

> 'A policy of automobile liability insurance' means a policy delivered or issued for delivery in this state . . .

By such a statute Minnesota has recognized the ability of its own state to define and regulate insurance policies within its own state, and yet refuses to acknowledge Wisconsin's sovereignty to do the same. Moreover, in the case of *Bolgrean v. Stich*, 293 Minn. 8, 196 N.W.2d 442 (1972), the Minnesota court recognized and concluded that insurers do charge rates with an eye toward the state in which the policy is issued. The court stated:

> The only party concerned with predictability is the insurer of the host's vehicle and the insurer of a Minnesota vehicle, it must be assumed, charged rates applicable to Minnesota risks. 196 N.W.2d 444.

Justice Otis, in his well-worded dissent from the Minnesota Supreme Court's decision on rehearing, points out succintly the rights of expectation Allstate should have been afforded wherein he stated as follows:

> The rights of this defendant, (Allstate) which are in my opinion constitutionally protected, were vested at the time it entered its contract for insurance with the decedent in Wisconsin prior to July 1, 1974. At that time stacking had been held unavailable by the Wisconsin court in its Nelson decision (*Nelson v. Employer's Mutual Casualty Co.*, 63 Wis.2d 558, 217 N.W.2d 670 [1974]) filed May 20, 1974. Defendant had a right to rely on that decision in fixing its rates and in actuarially assessing its exposure. Where the contract was entered into in Wisconsin by Wisconsin residents, who were exposed primarily to Wisconsin hazards, and the loss which could be anticipated did in fact occur in Wisconsin and was wholly unrelated to the hazards of any other state, defendant had a right to rely on the application of Wisconsin law. The *Restatement, Conflict of Laws 2d*, §188, Comment b, states the case well:
>
> > ". . . Parties entering a contract will expect at the very least, subject perhaps to rare exceptions, that the provisions of the contract will be binding upon them. Their expectations should not be disappointed by application of the local law rule of a state which would strike down the contract or a provision thereof unless the value of

> protecting the expectations of the parties is substantially outweighed in the particular case by the interest of the state with the invalidating rule in having this rule applied. The extent of the interest of a state in having its rule applied should be determined in the light of the purpose sought to be achieved by the rule *and by the relation of the transaction and the parties to that state.*" (Italics supplied.)
>
> Granted that the Minnesota rule of law is better, in the absence of any substantial interest by this state in the subject of the litigation, our intrusion into the rights of those who have transacted business in good faith elsewhere verges on meddling in the judicial policy of a sister state if we deny the legitimate expectations of a contracting party by applying Minnesota law on the fragile grounds here asserted. (A-10-12)

A relatively recent Minnesota Law Review case discussing the propensity of the Minnesota Supreme Court to apply their law on fragile grounds contained the following language which is very appropriate to the situation presented in this case:

> One of the traditional purposes of conflict-of-laws rules has been to aviod this evil (forum shopping)—to establish minimum guidelines for interjurisdictional disputes to prevent the plaintiff from being able to shop for the jurisdiction most likely to award him damages. The Minnesota Court ignored this factor in its consideration, for its new methodology might well be labeled either as "forum law applies", or more simply "plaintiff wins". 58 Minnesota Law Review 203.

D. RESPONDENT'S MINNESOTA "CONTACTS" ARE EITHER INSIGNIFICANT OR OUTWEIGHED BY THOSE OF WISCONSIN.

In anticipation of the respondent's argument we refer to their brief opposing the Petition for Certiorari and the reasons which they cited therein that Minnesota had ample reason for its decision.

1. Respondent's first argument is that the decedent worked for 15 years in the State of Minnesota and had driven across the Minnesota-Wisconsin border almost daily to his employment. First of all, we don't know what the decedent's driving arrangement to work was. We have no idea whether there was a car pool, daily sales trips, or what the arrangement was. Nevertheless, such a contact with Minnesota is neither related to the transaction, which took place in Wisconsin, nor the occurrence giving rise to the transaction, which took place in Wisconsin.

2. The second argument of respondent is that the respondent, the personal representative of the decedent, was appointed in Minnesota. Here again, this has nothing to do with either the transaction or the occurrence giving rise to this lawsuit and, in effect, is somewhat misleading, since I would presume that the decedent being a resident of the State of Wisconsin also had probate in Wisconsin and that actually Minnesota's probate was an ancillary proceeding, although the record is somewhat muddled in this regard.

3. The third argument advanced by the respondent is that the respondent's representative was not a party to the contract. I would think this would argue against application of Minnesota law and point up the ability to forum shop if somehow

having a representative not associated with the contract would be a contact significant to the forum state adopting its law. Furthermore, in *Delta Pine*, the person who created the default on the bond was not a party to the contract; in *Yates* (supra) the widow was not a party to the contract; yet, in both cases the Supreme Court did not choose the state's law where those two people resided.

4. The fourth argument advanced is that the petitioner does business in Minnesota and is subject to the insurance division's supervision. This argument is dealt with in the reasoning in *Savchuk* as referred to above.

5. The fifth argument is that the insurance policy is an ambulatory contract and might be sued on in any state. While this is true, the previous decisions of this court have indicated that in other ambulatory contracts, there still must be contacts with the forum state which are not so slight and casual as to preclude the forum state from the choice of their law.

6. The sixth argument advanced is that the policy covered risks within Minnesota by virtue of the decedent's presence within the state. Presumably this refers to the decedent traveling to Minnesota. I would assume he traveled to other states in the union and I cannot believe this court would indicate that that would provide grounds for the respondent to choose the laws of those states.

7. The seventh argument advanced by the respondent is that the State of Minnesota is vitally concerned with the administration of decedents' estates and the well-being of any surviving dependents who are residents of this state. In this regard the record is muddled as to what kind of probate took place in Minnesota and the location of any surviving dependents. What is misleading about this argument is that there

likely was a probate in Wisconsin which would nullify the argument. Additionally, a wrongful death action in Minnesota is brought for the benefit of the next of kin. The record does not disclose where the next of kin of this decedent are, but the ages of the next of kin are such that they have likely remained in Wisconsin.

Moreover, even if there was some validity to any of the arguments advanced by the respondent, the previous decisions of this court on choice of law and the recent cases of this court on jurisdiction, indicate that the contacts with Wisconsin, as compared with those Minnesota contacts, are so overwhelming as to make the Minnesota contacts appear to be "slight and casual" in comparison, and application of Minnesota law, based upon them, is a violation of "traditional notions of fair-play and substantial justice".

CONCLUSION

In the choice of law cases cited in this brief and in all cases brought before the Minnesota Supreme Court, there has never been any state court or U. S. Supreme Court decision in which the forum court chose its own law over that of a competing state when the contract was not drawn in the forum state, the occurrence giving rise to interpretation of the contract did not take place in the forum state, and the parties to the dispute were not all residents of the forum state at the time of the occurrence.

If you freeze the facts at the time of the accident giving rise to this litigation, there is not one contact with the State of Minnesota surrounding either this transaction or the occurrence. There is good reason in choice of law cases to freeze or vest the contacts at the time of the occurrence giving rise to

the litigation because if you allow the contacts to develop after the occurrence, then a situation of forum-shopping is fostered.

If, however, the significant contacts are not frozen at the time of the occurrence, the only other contact with the State of Minnesota that developed after the occurrence was the subsequent residency of the representative bringing this lawsuit. With regard to that contact, it is a dangerous one to deem significant in choice of law situations because there would then be virtually no restraint on forum-shopping because the representative could be chosen from any state and the lawsuit then commenced. Moreover, the case of *Home Insurance Company v. Dick* (supra) has indicated that this contact is not significant. The case itself said it as indicated in the quoted portions cited above and that this was true is reiterated in the case of *Clay v. Sun Insurance Office Ltd.* (supra), where the court, referring to the *Dick* decision, indicated that activities in the state of the forum which could be significant contacts for a choice of law were "wholly lacking" in the *Dick* case (377 U.S. 181, 84 S.Ct. 1198), and a footnote therein quotes, among other things, the sentence set forth earlier in our brief, "the fact that Dick's permanent residence was in Texas is without significance".

Therefore, Minnesota clearly has absolutely no contacts with this litigation whether we examine its contacts at the time of the transaction, or the time of the occurrence giving rise to the dispute, or if we examine facts which occurred after the occurrence and transaction. The only contact in the State of Minnesota with this case, namely the after-acquired residency of Mrs. Hague, has previously been dismissed in other choice of law cases before this court.

Minnesota has shown little or no concern for the sovereignty of the State of Wisconsin. Instead the Supreme Court of Minnesota has stretched every possible contact with the State of Minnesota and failed to at all compare those contacts with the overwhelming number of more significant and substantial contacts with the State of Wisconsin. That this is distinctly out of step with the thinking of this court has been clearly indicated by Justice White in *Worldwide Volkswagen* (supra) wherein Justice White stated:

> The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the 14th Amendment. 100 S.Ct. 565.

The present decision of the Minnesota Supreme Court plainly and simply indicates that they will hold all insurers who do business in the State of Minnesota to their blanket public policy, even in disputes involving non-residents traveling outside of the State of Minnesota and carrying insurance policies issued, underwritten and paid for outside of the State of Minnesota, covering vehicles garaged outside of the State of Minnesota. Such an assertion completely erases the rule of comity and violates this court's interpretation of the full faith and credit and due process provisions of the Constitution.

For these reasons, petitioner requests that this Court reverse the decision of the Minnesota Supreme Court and direct that the action of the respondent seeking to stack the uninsured motorist benefits of a Wisconsin insurance policy be dismissed.

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